

Attachment “A”

From: Cris Costello [mailto:cris.costello@sierraclub.org]

Sent: Thursday, July 29, 2010 1:23 PM

To: 'Nell, Terril A'; 'Payne, Jack M'

Cc: 'Jon Thaxton'; 'Theresa A. Connor'; 'Jack Merriam'; 'Brooks, Jerry'; 'Ritchie, Heather'; 'Thomas, Michael'

Subject: RE: Sarasota

Terril:

Your reply only serves to make our point louder and stronger than before:

1. You have intentionally ignored the water quality/water pollution prevention issue; your attempt to hide the fact that the "iron instead of nitrogen" recommendation for the summer is under the **Preventing Pollution** section of the FYN Handbooks is a failure. The recommendation is listed as one of the best ways to prevent water pollution by numerous IFAS and FDEP publications.

After 16 years of FDEP and IFAS recommending "iron instead of nitrogen", if you choose to remove that water pollution prevention recommendation from future publications you will need to provide us with the science that substantiates any such removal. **I hereby submit a public records request for that information if it exists.**

2. You have threatened to weaken UF water pollution prevention recommendations rather than answer a perfectly legitimate request for information.

What you have accomplished is to taint the reputation of your department and UF and nothing else. Our request for the information still stands and if I have neglected to formalize that request in the past I do so now: **I hereby submit a public records request for the information sought in the below email dated Tuesday, July 27, 2010 4:57 PM.**

In addition, in reference to your statement below: "IFAS Extension requires review of all EDIS publications and this procedure has been followed on all of our extension publications."

I hereby submit a public records request for the names, titles and contact information and their respective reviews made prior to publication for SL 283 and ENH 1115.

From my reading of the public records law, none of these requested items are exempt from disclosure. If I have not used the proper language or method to submit a formal public records request please advise me of the correct manner to do so.

Let me remind you that I have attempted for over two years (since June 2008) to resolve this issue outside of public view; any further delay will prove that your desire is to make this conversation public.

Thank you for your prompt attention to these public records requests,

Cris Costello

Regional Representative

Sierra Club

1365 Fruitville Road

Sarasota, FL 34236

Office: 941-951-6084

Cell: 941-914-0421

Attachment “B”

From: Cris Costello [mailto:cris.costello@sierraclub.org]
Sent: Friday, August 13, 2010 12:53 PM
To: 'jys@ufl.edu'
Cc: 'Nell,Terril A'; 'eam@ufl.edu'; 'Payne,Jack M'
Subject: Public Records Request

Dear Ms. Sikes:

On July 29, 2010 I submitted public records requests to Terril Nell, with a copy to Jack Payne. Because I have heard nothing since that date, I am sending the request again, to you, in order to ensure that it has been correctly submitted and will be correctly processed.

In the below email chain you will find my previous public records requests, however, I here restate those requests:

1. Terril Nell was quoted in the article *Retail Group Dumps Fertilizer Ban* <http://www.sunshinestatenews.com/story/retail-group-dumps-fertilizer-ban-0>. Nell stated: "We are not able to support fertilizer management recommendations unless we can document the science upon which they are based." "The state model ordinance is backed by sound science and we are recommending that cities and counties adopt this ordinance until additional science is available."

I hereby request the "science upon which" the urban "fertilizer management recommendations" in the "state model ordinance" are based; this includes:

- A. The scientific literature that suggests a 3-foot fertilizer-free zone is superior to a 10-foot fertilizer-free zone for keeping fertilizer from running into surface water bodies;
 - B. The scientific literature that suggests no storm water runoff of applied fertilizer nutrients occurs unless a rainfall of 2 inches or more falls within a 24-hour period;
 - C. The scientific literature that suggests 30% slow/controlled release fertilizer is more or equally protective of water quality than 50% or higher slow/controlled release fertilizer;
 - D. The scientific literature that suggests the FDEP Model "Prohibited Application Period" can be followed to the extent that fertilizer will not be applied before or during a rainfall event that produces enough runoff to carry applied nutrients from a landscape.
2. At the municipal, county and state level Terril Nell and George Hochmuth have repeatedly promoted fertilizer management recommendations that are in direct conflict with the FYN Florida-friendly landscaping fertilization recommendations.

I hereby request the documentation, including email and hard copy correspondence, upon which the contradiction between Terril Nell's and George Hochmuth's policy recommendations regarding urban fertilizer management and the current FYN Florida-friendly landscaping fertilization recommendations is based. This will include correspondence between Nell and Hochmuth and representatives of the turfgrass, landscape maintenance, nursery growers, fertilizer and pest control industries, the retail federation, FDACS, FDEP and any and all state senators, representatives and legislative aides relating to the following publications and processes:

- a. The revision of the *2008 Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* (BMP Manual);
 - b. The drafting of the 2008 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
 - c. The drafting of SL283: *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*;
 - d. The drafting of ENH 1115: *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*;
 - e. The drafting of the *Florida's Urban Landscape Water Quality Research Consortium* mission statement, research priorities, and discussion paper;
 - f. The drafting of 2009 Senate Bill 494 and 2010 Senate Bill 382/House Bill 1445; and
 - g. The 2010 revision of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
3. **I hereby request** the names, titles and contact information for all the internal and external reviewers of the 2009 IFAS (EDIS) publications SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances* and ENH 1115 *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*, and their respective reviews done prior to the original publication of SL 283 and ENH 1115.
4. **I hereby request** the names, titles and contact information for all the internal and external reviewers of SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*, and their respective reviews done after the original publication of SL 283.

In addition to my previous requests, **I hereby request** the correspondence (and scientific literature if it exists) relating to the change in the FYN Checklist from at least 30% slow release Nitrogen on turf (in the 2009 checklist) to at least 15% slow release Nitrogen on turf (in the 2010 checklist). I had informally requested this information from Esen Momol in July but have received no response.

Please advise me on how to proceed from here and if the records requests need to be formatted differently from the above.

Thank you,

Cris Costello

Regional Representative

Sierra Club

1365 Fruitville Road

Sarasota, FL 34236

Cell: 941-914-0421

Attachment “C”

From: Cris Costello [cris.costello@sierraclub.org]
Sent: Thursday, August 19, 2010 2:02 PM
To: 'Sikes, Janine'
Subject: FW: Public Records Request

Ms. Sikes:

Per your request, I am refining the public records request number 2 from the below email.

Please change that request to the following:

All email or hard copy correspondence from June 2008 to the present between (to and from) George Hochmuth, Terril Nell, Erica Santella, Michael Thomas (FDEP), Chris Wible, Steven Kelly, Jim Spratt, Barry Troutman, Mary Hartney, Allen Fugler, James Skillen, Betsy McGill, Hugh Gramling, Ben Bolusky and Chuck Aller.

Thank you so much.

Cris Costello

Regional Representative

Sierra Club

1365 Fruitville Road

Sarasota, FL 34236, Hugh Gramling

Office: 941-951-6084

Cell: 941-914-0421

Attachment “D”



Office of the Vice President and General Counsel

123 Tigert Hall
PO Box 113125
Gainesville, FL 32611-3125
352-392-1358
352-392-4387 Fax

September 9, 2010

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236

RE: Public Records Request

Dear Ms Costello:

I am following up on your public records requests and our telephone conversation last week. You asked for whatever responsive information we could provide as soon as possible, especially regarding the documents and information that I explained are not actually public records subject to disclosure under the Florida Public Records Act.

In response to your requests, numbered 3 and 4 in your August 13, 2010, email to Janine Sikes, any documents that might have the names, titles, contact information, and reviews of the reviewers of the two EDIS publications, "Unintended Consequences Associated with Certain Urban Fertilizer Ordinances" and "Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping," are not public records. Therefore, the University is not providing documents to you in response that these requests.

As clarified by the Florida Supreme Court (*Shevin v. Byron, Harless, et al.*, 379 So.2d 633 (1980)), public records are those materials that are prepared in connection with official agency business and intended to perpetuate, communicate, or formalize knowledge. Materials that are prepared in review of EDIS publications, drafts, and revisions are merely precursors of governmental records. They are not intended to be final evidence of agency action. In this case, the reviews are an integral part of the process of research, study, and evaluation that goes into preparing the EDIS documents for publication.

In order to maintain the integrity and objectivity of the academic research and publication process, University researchers have a strong interest in withholding disclosure of this type of record. See *Molina v. The Board of Regents of the State of Florida*, Case No. 85-3212-CA (8th Cir. Fla.) 1985. The reviews are comparable to the research materials that were held by the circuit court in the *Molina* case to be preliminary to the actual research and scientific study. The anonymity of the reviewers and their reviews of the EDIS publications is vital to maintain the academic setting and atmosphere that ensures integrity and objectivity in formulating scientific advice. To subject these individual reviews to public scrutiny would extend the reach of the Public Records law beyond its useful purpose without supporting its legitimate public purpose.

The University of Florida respects greatly the prized and essential right of the public to have access to documents that support the business of its governmental agencies. However, there is also a valuable public need related to the freedom of academic researchers to formulate hypotheses and weigh scientific options in putting together recommendations that are included in their publications. The public would not be served by interrupting the scientific process by subjecting reviews, rough drafts, and other preliminary information to public scrutiny. These are the building blocks of the final product of University investigators' research and writing process, which includes the evaluation of existing scientific studies and information as well as independent reviews by other individuals. Of course, in evaluating the utility or accuracy of the information in scientifically based publications, anyone is free to review the literature, consult with experts, and weigh the evidence in support of or against the conclusions in the publication.

You also requested "the science upon which the urban fertilizer management recommendations in the state model ordinance are based." There is no particular document upon which that science is based. The Public Records Act does not require the University to conduct studies or to create documents in response to your request. In fact, Dr. Nell has already provided extensive scientific information and references to you in response to your past requests for information.

Your remaining requests relate to correspondence between Drs. Nell and Hochmuth and many other individuals and organizations. We are in the process of collecting that correspondence and will contact you after we have completed the location and review of the documents. This correspondence is likely substantial, and we will provide an estimate of the cost of reproducing it for you.

I understand that your requests have been included in more than one communication. If there are documents that you have requested in addition to those that I have identified in this letter, please do not hesitate to contact me with the additional documents that you request.

Sincerely,



Paul Elihu Stern
Senior University Counsel

PES/clt

Attachment “E”

ROBERT N. HARTSELL, P.A.

June 9, 2011

Paul Elihu Stern, Esq.
Senior University Counsel
Intellectual Property & Research
University of Florida
123 Tigert Hall
Gainesville, Florida 32611

Re: Public Records Request concerning IFAS (EDIS) publication SL 283 and ENH 1115

Dear Mr. Stern:

Please consider this a public records request pursuant to Chapter 119.07, Florida Statutes, to review all public records, as that term is defined in Chapter 119, Florida Statutes, specifically pertaining to IFAS (EDIS) publication SL 283 and ENH 1115, including the following:

1. Any and all documents, meeting logs, meeting minutes, studies, opinions, models, data, analysis, notes, calendars, objections, transcripts and/or communications, videos, audio recordings, internal memos, staff reports, e-mails or other correspondence to and/or from University of Florida staff, agents, private entities, public entities and/or officials which identify, pertain to, discuss and/or substantiate the quantity of documents, costs and calculations of costs for production of the public records requested of the University by Cris Costello on August 13, 2010 and clarified on August 18, 2010. (See Attached exhibit A and B).
2. Any and all documents, meeting logs, meeting minutes, studies, opinions, models, data, analysis, notes, calendars, objections, transcripts and/or communications, videos, audio recordings, internal memos, staff reports, e-mails or other correspondence to and/or from University of Florida staff, agents, private entities, public entities and/or officials which identify, pertain to, and/or discuss the September 9, 2010 denial of public records request numbered 3 and 4. (See Attached Exhibit C).
3. Any and all emails and/or correspondence to and/or originating from Janine Sikes, Dr. Nell and/or Dr. Hochmuth from August 13, 2010 through the date of this request regarding the public records requested of the University by Cris Costello on August 13, 2010 and clarified on August 18, 2010. (See Attached Exhibit A).
4. The names, titles and contact information for all the internal and external reviewers of the 2011 revision of the IFAS (EDIS) publication SL 283, new title *Urban Water Quality*

and Fertilizer Ordinances: Avoiding Unintended Consequences: A Review of the Scientific Literature (<http://edis.ifas.ufl.edu/ss496>).

5. Any and all documents, meeting logs, meeting minutes, studies, opinions, models, data, analysis, notes, calendars, objections, transcripts and/or communications, videos, audio recordings, internal memos, staff reports, e-mails or other correspondence to and/or from County staff, private entities, public entities and/or officials which identify and pertain to the correspondence and scientific literature relating to the change in the IFAS (EDIS) FYN Checklist from *at least 30% slow release Nitrogen* on turf (in the 2009 checklist) to *at least 15% slow release Nitrogen* on turf (in the 2010 checklist).

Electronic copies of documents are preferred, to the extent they are available.

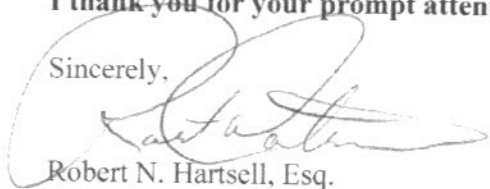
If any recordings/documents requested above have been lost or destroyed, please identify by author, publisher, videographer and/or audio recorder, date and subject matter the recordings or documents so lost or destroyed. With respect to any recording or document requested which was once in possession, custody or control, but no longer is, please indicate the date the document ceased to be in possession, custody or control, the manner in which it is ceased, and the name and address of its present custodian. If any recordings/documents requested above are deemed by you as attorney client privileged or attorney work product, please provide the name, date and an identifying description of such document.

Should you deny this request, or any part of the request, please state in writing the basis for the denial, including the exact statutory citation authorizing the denial, as required by S. 119.07(1)(d), Fla.Stat. As recognized by the University of Florida's public records policy "[v]irtually any document created, received or maintained by the University or by its representatives is considered public record. Thus most correspondence and other documents you author or receive are subject to inspection by the public."

I would like to have a representative review these documents and audio/visual recordings at your earliest opportunity. Your immediate response is requested. Please contact us at (954) 232-4889 for the best method of review of these materials as they become available.

I thank you for your prompt attention to this request.

Sincerely,



Robert N. Hartsell, Esq.

cc: Cris Costello, Sierra Club.

Exhibit A

From: Cris Costello [cris.costello@sierraclub.org]
Sent: Thursday, August 19, 2010 2:02 PM
To: 'Sikes, Janine'
Subject: FW: Public Records Request

Ms. Sikes:

Per your request, I am refining the public records request number 2 from the below email.

Please change that request to the following:

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Thank you so much.

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236, Hugh Gramling
Office: 941-951-6084
Cell: 941-914-0421

From: Cris Costello [mailto:cris.costello@sierraclub.org]
Sent: Friday, August 13, 2010 12:53 PM
To: 'jys@ufl.edu'
Cc: 'Nell, Terril A'; 'eam@ufl.edu'; 'Payne, Jack M'
Subject: Public Records Request

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I hereby request the “science upon which” the urban “fertilizer management recommendations” in the “state model ordinance” are based; this includes:

- A. The scientific literature that suggests a 3-foot fertilizer-free zone is superior to a 10-foot fertilizer-free zone for keeping fertilizer from running into surface water bodies;
 - B. The scientific literature that suggests no storm water runoff of applied fertilizer nutrients occurs unless a rainfall of 2 inches or more falls within a 24-hour period;
 - C. The scientific literature that suggests 30% slow/controlled release fertilizer is more or equally protective of water quality than 50% or higher slow/controlled release fertilizer;
 - D. The scientific literature that suggests the FDEP Model “Prohibited Application Period” can be followed to the extent that fertilizer will not be applied before or during a rainfall event that produces enough runoff to carry applied nutrients from a landscape.
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I hereby request the documentation, including email and hard copy correspondence, upon which the contradiction between Terril Nell’s and George Hochmuth’s policy recommendations regarding urban fertilizer management and the current FYN Florida-friendly landscaping fertilization recommendations is based. This will include correspondence between Nell and Hochmuth and representatives of the turfgrass, landscape maintenance, nursery growers, fertilizer and pest control industries, the retail federation, FDACS, FDEP and any and all state senators, representatives and legislative aides relating to the following publications and processes:

- a. The revision of the *2008 Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* (BMP Manual);
- b. The drafting of the 2008 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
- c. The drafting of SL283: *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*;
- d. The drafting of ENH 1115: *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*;
- e. The drafting of the *Florida’s Urban Landscape Water Quality Research Consortium* mission statement, research priorities, and discussion paper;
- f. The drafting of 2009 Senate Bill 494 and 2010 Senate Bill 382/House Bill 1445; and
- g. The 2010 revision of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;

3. **I hereby request** the names, titles and contact information for all the internal and external reviewers of the 2009 IFAS (EDIS) publications SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances* and ENH 1115 *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*, and their respective reviews done prior to the original publication of SL 283 and ENH 1115.

4. **I hereby request** the names, titles and contact information for all the internal and external reviewers of SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*, and their respective reviews done after the original publication of SL 283.

In addition to my previous requests, **I hereby request** the correspondence (and scientific literature if it exists) relating to the change in the FYN Checklist from at *least 30% slow release Nitrogen* on turf (in the 2009 checklist) to *at least 15% slow release Nitrogen* on turf (in the 2010 checklist). I had informally requested this information from Esen Momol in July but have received no response.

Please advise me on how to proceed from here and if the records requests need to be formatted differently from the above.

Thank you,

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236
Cell: 941-914-0421

Exhibit B

From: Sikes, Janine [<mailto:jysikes@UFL.EDU>]
Sent: Wednesday, September 22, 2010 4:43 PM
To: Cris Costello
Cc: Nell, Terril A; Hochmuth, George J, II; Stern, Paul E; Adams, Jane A
Subject: Public Records Request

Dear Ms. Costello:

I am writing specifically regarding the part of your public records request that we clarified on Aug. 18. I apologize for the delay. You asked for copies of: All email or hard copy correspondence from June 2008 to the present between (to and from) George Hochmuth, Terril Nell, Erica Santella, Michael Thomas (FDEP), Chris Wible, Steven Kelly, Jim Spratt, Barry Troutman, Mary Hartney, Allen Fugler, James Skillen, Betsy McGill, Hugh Gramling, Ben Bolusky and Chuck Aller.

Dr. Nell and Dr. Hochmuth report that your request would require an extensive amount of staff time to produce. As a result, the following is the cost estimate to provide you with the documents you request:

42,180 pages @ \$0.10 per page = \$4,218
180 hours @ \$10/hour = \$1,800

Total estimated cost=\$6,018

Additionally, these e-mails will require inspection by the general counsel's office to ensure no protected or other exempt information is released. Attorney time is charged at \$89.61/hour and is estimated at 200 hours.

We require a check for the entire amount before we will begin producing these documents. If this is an overestimate, the University will refund the difference. If it is an underestimate, the University will invoice the difference and may require additional payment to complete the response. Please provide payment payable to the University of Florida in the amount of \$23,940.

Please let us know how you would like us to proceed.

Sincerely,

Janine Sikes
Director of Public Affairs
University Relations
101 Tigert Hall
352-846-3903/06
jysikes@ufl.edu

Exhibit C



Office of the Vice President and General Counsel

123 Tigert Hall
PO Box 113125
Gainesville, FL 32611-3125
352-392-1358
352-392-4387 Fax

September 9, 2010

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236

RE: Public Records Request

Dear Ms Costello:

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In response to your requests, numbered 3 and 4 in your August 13, 2010, email to Janine Sikes, any documents that might have the names, titles, contact information, and reviews of the reviewers of the two EDIS publications, "Unintended Consequences Associated with Certain Urban Fertilizer Ordinances" and "Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping," are not public records. Therefore, the University is not providing documents to you in response that these requests.

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Cris Costello
Page 2 of 2
September 9, 2010

The University of Florida respects greatly the prized and essential right of the public to have access to documents that support the business of its governmental agencies. However, there is also a valuable public need related to the freedom of academic researchers to formulate hypotheses and weigh scientific options in putting together recommendations that are included in their publications. The public would not be served by interrupting the scientific process by subjecting reviews, rough drafts, and other preliminary information to public scrutiny. These are the building blocks of the final product of University investigators' research and writing process, which includes the evaluation of existing scientific studies and information as well as independent reviews by other individuals. Of course, in evaluating the utility or accuracy of the information in scientifically based publications, anyone is free to review the literature, consult with experts, and weigh the evidence in support of or against the conclusions in the publication.

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I understand that your requests have been included in more than one communication. If there are documents that you have requested in addition to those that I have identified in this letter, please do not hesitate to contact me with the additional documents that you request.

Sincerely,



Paul Elihu Stern
Senior University Counsel

PES/clt

Attachment ‘F’



Office of the Vice President and General Counsel

123 Tigert Hall
PO Box 113125
Gainesville, FL 32611-3125
352-392-1358
352-392-4387 Fax

August 1, 2011

Via Federal Express

Robert N. Hartsell, Esq.
2407 SE 14th Street
Pompano Beach, Florida 33062

RE: Public Records Request


Dear Mr. Hartsell:

Thank you for your public records request of June 9, 2011. We have searched the relevant University records for this response. Below, I respond to each of your numbered paragraphs.

1. I have enclosed copies of the records that pertain to the quantity of documents, costs, and calculations of costs for the production of the referenced public records requests.
2. There are no public records regarding the denial of the referenced public records requests other than the letter in your exhibit C.
3. I have enclosed the relevant documents from Janine Sikes and Professors Nell and Hochmuth.
4. The issue of the names, titles, and contact information for the reviewers of the 2011 revision of the referenced publication are not public records, as explained in the letter which is Exhibit C to your request.
5. I have enclosed an email regarding that question. There are no other public records.

If you have any questions regarding this response and the enclosed records, please do not hesitate to contact me.

Sincerely,


Paul Elihu Stern
Senior University Counsel

PES/clt

Sikes, Janine

From: Sikes, Janine
Sent: Wednesday, September 22, 2010 4:43 PM
To: Cris Costello
Cc: Nell, Terril A; Hochmuth, George J, II; Stern, Paul E; Adams, Jane A
Subject: Public Records Request

Dear Ms. Costello:

I am writing specifically regarding the part of your public records request that we clarified on Aug. 18. I apologize for the delay. You asked for copies of: All email or hard copy correspondence from June 2008 to the present between (to and from) George Hochmuth, Terril Nell, Erica Santella, Michael Thomas (FDEP), Chris Wible, Steven Kelly, Jim Spratt, Barry Troutman, Mary Hartney, Allen Fugler, James Skillen, Betsy McGill, Hugh Gramling, Ben Bolusky and Chuck Aller.

Dr. Nell and Dr. Hochmuth report that your request would require an extensive amount of staff time to produce. As a result, the following is the cost estimate to provide you with the documents you request:

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180 hours @ \$10/hour = \$1,800

Total estimated cost=\$6,018

Additionally, these e-mails will require inspection by the general counsel's office to ensure no protected or other exempt information is released. Attorney time is charged at \$89.61/hour and is estimated at 200 hours.

We require a check for the entire amount before we will begin producing these documents. If this is an overestimate, the University will refund the difference. If it is an underestimate, the University will invoice the difference and may require additional payment to complete the response. Please provide payment payable to the University of Florida in the amount of \$23,940.

Please let us know how you would like us to proceed.

Sincerely,

Janine Sikes
Director of Public Affairs
University Relations
101 Tigert Hall
352-846-3903/06
jysikes@ufl.edu

Sikes, Janine

From: Stern, Paul E
Sent: Wednesday, September 22, 2010 4:26 PM
To: Sikes, Janine
Subject: RE: Public Records request

Janine,

I suggest you use the following. The IFAS professors' arithmetic wasn't quite right.

Dear Ms. Costello:

I am writing specifically regarding the part of your public records request that we clarified on Aug. 18. I apologize for the delay. You asked for copies of: All email or hard copy correspondence from June 2008 to the present between (to and from) George Hochmuth, Terril Nell, Erica Santella, Michael Thomas (FDEP), Chris Wible, Steven Kelly, Jim Spratt, Barry Troutman, Mary Hartney, Allen Fugler, James Skillen, Betsy McGill, Hugh Gramling, Ben Bolusky and Chuck Aller.

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180 hours @ \$10/hour = \$1,800

Total estimated cost=\$6,018

Additionally, these e-mails will require inspection by the general counsel's office to ensure no protected or other exempt information is released. Attorney time is charged at \$89.61/hour and is estimated at 200 hours.

We require a check for the entire amount before we will begin producing these documents. If this is an overestimate, the University will refund the difference. If it is an underestimate, the University will invoice the difference and may require additional payment to complete the response. Please provide payment payable to the University of Florida in the amount of \$23,940.

Please let us know how you would like us to proceed.

Sincerely,

Janine Sikes
Director of Public Affairs
University Relations
101 Tigert Hall
352-846-3903/06
jysikes@ufl.edu

Paul Elihu Stern
Senior University Counsel
Intellectual Property & Research
University of Florida

123 Tigert Hall
Gainesville, Florida 32611

352-392-1358, voice
352-392-4387, fax
pestern@ufl.edu

From: Sikes, Janine
Sent: Tuesday, September 21, 2010 10:33 AM
To: Stern, Paul E
Subject: Public Records request

Shall I go ahead and send the following to Cris Costello? Make any edits as you see fit. janine

Dear Ms. Costello:

I am writing specifically regarding the part of your public records request that we clarified on Aug. 18. I apologize for the delay. You asked for copies of: All email or hard copy correspondence from June 2008 to the present between (to and from) George Hochmuth, Terril Nell, Erica Santella, Michael Thomas (FDEP), Chris Wible, Steven Kelly, Jim Spratt, Barry Troutman, Mary Hartney, Allen Fugler, James Skillen, Betsy McGill, Hugh Gramling, Ben Bolusky and Chuck Aller.

Dr. Nell and Dr. Hochmuth report that your request would require an extensive amount of staff time to produce. As a result, the following is the cost estimate to provide you with the documents you request:

Dr. Nell:

- 3,620 emails, 4 pages for printing
- 600 attachments, 15 pages for printing
- 14,480 pages @ \$0.10 per page = \$2,348
- 100 hours @ \$10/hr = \$1000

Total estimated cost = \$3,348.00

Dr. Hochmuth:

2,800 emails, averaging 4 pages each for printing
500 attachments, averaging 15 pages for printing

This comes to 18,700 pages @ \$0.10 per page=\$1,870
80 hours @ \$10/hour= \$800

Total estimated cost=\$2,670

Additionally, these e-mails will require inspection by the general counsel's office to ensure no protected information is released.

We require a check for the entire amount before we will begin producing these documents.

Please let us know how you would like us to proceed.

Sincerely,

Janine Sikes
Director of Public Affairs
University Relations
101 Tigert Hall
352-846-3903/06
jysikes@ufl.edu

Sikes, Janine

From: Tomlinson, Cassandra L
Sent: Thursday, September 16, 2010 9:50 AM
To: Sikes, Janine; Payne, Jack M; Nell, Terril A; Hochmuth, George J, II
Cc: Stern, Paul E
Subject: Sierra Club
Attachments: Costello ltr 9-9-10.pdf

Please see the attachment letter to Cris Costello from Paul Stern.

Cassandra Tomlinson-Bridges

*Assistant to Paul E. Stern and Imogene L. Cathey
Office of the Vice President and General Counsel
University of Florida
P.O. Box 113125
Gainesville, FL 32611-3125
ctomlin@ufl.edu
(352) 392-1358 phone
(352) 392-4387 fax*



Office of the Vice President and General Counsel

123 Tigert Hall
PO Box 113125
Gainesville, FL 32611-3125
352-392-1358
352-392-4387 Fax

September 9, 2010

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236

RE: Public Records Request

Dear Ms Costello:

I am following up on your public records requests and our telephone conversation last week. You asked for whatever responsive information we could provide as soon as possible, especially regarding the documents and information that I explained are not actually public records subject to disclosure under the Florida Public Records Act.

In response to your requests, numbered 3 and 4 in your August 13, 2010, email to Janine Sikes, any documents that might have the names, titles, contact information, and reviews of the reviewers of the two EDIS publications, "Unintended Consequences Associated with Certain Urban Fertilizer Ordinances" and "Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping," are not public records. Therefore, the University is not providing documents to you in response that these requests.

As clarified by the Florida Supreme Court (*Shevin v. Byron, Harless, et al.*, 379 So.2d 633 (1980)), public records are those materials that are prepared in connection with official agency business and intended to perpetuate, communicate, or formalize knowledge. Materials that are prepared in review of EDIS publications, drafts, and revisions are merely precursors of governmental records. They are not intended to be final evidence of agency action. In this case, the reviews are an integral part of the process of research, study, and evaluation that goes into preparing the EDIS documents for publication.

In order to maintain the integrity and objectivity of the academic research and publication process, University researchers have a strong interest in withholding disclosure of this type of record. See *Molina v. The Board of Regents of the State of Florida*, Case No. 85-3212-CA (8th Cir. Fla.) 1985. The reviews are comparable to the research materials that were held by the circuit court in the *Molina* case to be preliminary to the actual research and scientific study. The anonymity of the reviewers and their reviews of the EDIS publications is vital to maintain the academic setting and atmosphere that ensures integrity and objectivity in formulating scientific advice. To subject these individual reviews to public scrutiny would extend the reach of the Public Records law beyond its useful purpose without supporting its legitimate public purpose.


The University of Florida respects greatly the prized and essential right of the public to have access to documents that support the business of its governmental agencies. However, there is also a valuable public need related to the freedom of academic researchers to formulate hypotheses and weigh scientific options in putting together recommendations that are included in their publications. The public would not be served by interrupting the scientific process by subjecting reviews, rough drafts, and other preliminary information to public scrutiny. These are the building blocks of the final product of University investigators' research and writing process, which includes the evaluation of existing scientific studies and information as well as independent reviews by other individuals. Of course, in evaluating the utility or accuracy of the information in scientifically based publications, anyone is free to review the literature, consult with experts, and weigh the evidence in support of or against the conclusions in the publication.

You also requested "the science upon which the urban fertilizer management recommendations in the state model ordinance are based." There is no particular document upon which that science is based. The Public Records Act does not require the University to conduct studies or to create documents in response to your request. In fact, Dr. Nell has already provided extensive scientific information and references to you in response to your past requests for information.

Your remaining requests relate to correspondence between Drs. Nell and Hochmuth and many other individuals and organizations. We are in the process of collecting that correspondence and will contact you after we have completed the location and review of the documents. This correspondence is likely substantial, and we will provide an estimate of the cost of reproducing it for you.

I understand that your requests have been included in more than one communication. If there are documents that you have requested in addition to those that I have identified in this letter, please do not hesitate to contact me with the additional documents that you request.

Sincerely,



Paul Elihu Stern
Senior University Counsel

PES/clt

Sikes, Janine

From: Sikes, Janine
Sent: Wednesday, September 15, 2010 3:19 PM
To: Hochmuth, George J, II; Nell, Terril A
Cc: Stern, Paul E
Subject: Checking in

Hi guys:

What is the ETA on the estimate of time, copies and cost for the documents requested by Cris Costello? We need to provide that estimate soon.

Thanks for your help, janine

Janine Sikes
Director of Public Affairs
University Relations
101 Tigert Hall
352-846-3903/06
jysikes@ufl.edu

Sikes, Janine

From: Stern,Paul E
Sent: Monday, September 13, 2010 10:37 AM
To: Sikes, Janine
Subject: Re: Sierra Club

I wasn't meaning to rush you. I believe Dr. Nell is out of the country.

From: Sikes, Janine
To: Stern,Paul E
Sent: Mon Sep 13 10:22:52 2010
Subject: RE: Sierra Club

That is on my list to do today. Thanks, janine

From: Stern,Paul E
Sent: Monday, September 13, 2010 10:22 AM
To: Sikes, Janine; Payne,Jack M; Nell,Terril A; Hochmuth,George J,II
Subject: FW: Sierra Club

I have attached a draft copy of the letter that was delivered to Cris Costello last Friday. When my assistant is back in the office, I can get you a copy of the signed letter. Please let me know when the emails and other correspondence are assessed. Paul

Paul Elihu Stern
Senior University Counsel
Intellectual Property & Research
University of Florida
123 Tigert Hall
Gainesville, Florida 32611

352-392-1358, voice
352-392-4387, fax
pestern@ufl.edu

Sikes, Janine

From: Cris Costello [cris.costello@sierraclub.org]
Sent: Friday, September 03, 2010 3:54 PM
To: Stern, Paul E; Sikes, Janine
Cc: 'Brooks, Jerry'; 'Ritchie, Heather'; 'Jon Thaxton'; 'Jack Merriam'; 'Theresa A. Connor'; 'Thomas, Michael'
Subject: FW: Public Records Request

Paul Elihu Stern
Senior University Counsel
Office of the Vice President and General Counsel
University of Florida
123 Tigert Hall
Gainesville, FL 32611

Mr. Stern:

Clarifications were made to the Sierra Club public records request regarding the correspondence portion of the inquiry and in as much, I understand the delay in the forwarding of those items.

However, the original unaltered request for the other items, especially the records relating to the pre-release and post-release internal and external reviews of the IFAS (EDIS) publications SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances* and ENH 1115 *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*, was made on July 29. More than a month has passed and the reviews and reviewer contact information have yet to be forwarded; these items should have been readily collected and immediately available.

I cannot imagine a legitimate reason for any further delay in providing access to these easy to locate items. Thank you for your prompt attention to this matter.

Sincerely,

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236
Office: 941-951-6084
Cell: 941-914-0421

From: Cris Costello [mailto:cris.costello@sierraclub.org]
Sent: Wednesday, August 25, 2010 8:16 AM
To: 'Sikes, Janine'
Subject: RE: Public Records Request

Yes, that is correct.

Thank you,

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236
Office: 941-951-6084
Cell: 941-914-0421

From: Sikes, Janine [mailto:jysikes@ufl.edu]
Sent: Tuesday, August 24, 2010 11:31 AM
To: Cris Costello
Subject: RE: Public Records Request

Cris: I need clarification on one thing:

You are looking for correspondence between George Hochmuth and all of the others listed; and between Terrill Nell and all the others listed.

And not two years of e-mails between George and Terrill.

Correct?

Thanks for your help, janine

Janine Sikes
Director of Public Affairs
University Relations
101 Tigert Hall
352-846-3903/06
jysikes@ufl.edu

From: Cris Costello [mailto:cris.costello@sierraclub.org]
Sent: Thursday, August 19, 2010 2:02 PM
To: Sikes, Janine
Subject: FW: Public Records Request

Ms. Sikes:

Per your request, I am refining the public records request number 2 from the below email.

Please change that request to the following:

All email or hard copy correspondence from June 2008 to the present between (to and from) George Hochmuth, Terril Nell, Erica Santella, Michael Thomas (FDEP), Chris Wible, Steven Kelly, Jim Spratt, Barry Troutman, Mary Hartney, Allen Fugler, James Skillen, Betsy McGill, Hugh Gramling, Ben Bolusky and Chuck Aller.

Thank you so much.

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236, Hugh Gramling
Office: 941-951-6084
Cell: 941-914-0421

From: Cris Costello [mailto:cris.costello@sierraclub.org]
Sent: Friday, August 13, 2010 12:53 PM
To: 'jys@ufl.edu'

Cc: 'Nell,Terril A'; 'eam@ufl.edu'; 'Payne,Jack M'

Subject: Public Records Request

Dear Ms. Sikes:

On July 29, 2010 I submitted public records requests to Terril Nell, with a copy to Jack Payne. Because I have heard nothing since that date, I am sending the request again, to you, in order to ensure that it has been correctly submitted and will be correctly processed.

In the below email chain you will find my previous public records requests, however, I here restate those requests:

1. Terril Nell was quoted in the article *Retail Group Dumps Fertilizer Ban* <http://www.sunshinestatenews.com/story/retail-group-dumps-fertilizer-ban-0>. Nell stated: "We are not able to support fertilizer management recommendations unless we can document the science upon which they are based." "The state model ordinance is backed by sound science and we are recommending that cities and counties adopt this ordinance until additional science is available."

I hereby request the "science upon which" the urban "fertilizer management recommendations" in the "state model ordinance" are based; this includes:

- A. The scientific literature that suggests a 3-foot fertilizer-free zone is superior to a 10-foot fertilizer-free zone for keeping fertilizer from running into surface water bodies;
 - B. The scientific literature that suggests no storm water runoff of applied fertilizer nutrients occurs unless a rainfall of 2 inches or more falls within a 24-hour period;
 - C. The scientific literature that suggests 30% slow/controlled release fertilizer is more or equally protective of water quality than 50% or higher slow/controlled release fertilizer;
 - D. The scientific literature that suggests the FDEP Model "Prohibited Application Period" can be followed to the extent that fertilizer will not be applied before or during a rainfall event that produces enough runoff to carry applied nutrients from a landscape.
2. At the municipal, county and state level Terril Nell and George Hochmuth have repeatedly promoted fertilizer management recommendations that are in direct conflict with the FYN Florida-friendly landscaping fertilization recommendations.

I hereby request the documentation, including email and hard copy correspondence, upon which the contradiction between Terril Nell's and George Hochmuth's policy recommendations regarding urban fertilizer management and the current FYN Florida-friendly landscaping fertilization recommendations is based. This will include correspondence between Nell and Hochmuth and representatives of the turfgrass, landscape maintenance, nursery growers, fertilizer and pest control industries, the retail federation, FDACS, FDEP and any and all state senators, representatives and legislative aides relating to the following publications and processes:

- a. The revision of the *2008 Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* (BMP Manual);
 - b. The drafting of the 2008 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
 - c. The drafting of SL283: *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*;
 - d. The drafting of ENH 1115: *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*;
 - e. The drafting of the *Florida's Urban Landscape Water Quality Research Consortium* mission statement, research priorities, and discussion paper;
 - f. The drafting of 2009 Senate Bill 494 and 2010 Senate Bill 382/House Bill 1445; and
 - g. The 2010 revision of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
3. **I hereby request** the names, titles and contact information for all the internal and external reviewers of the 2009 IFAS (EDIS) publications SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances* and ENH 1115 *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*, and their respective reviews done prior to the original publication of SL 283 and ENH 1115.
 4. **I hereby request** the names, titles and contact information for all the internal and external reviewers of SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*, and their respective reviews done after the original publication of SL 283.

In addition to my previous requests, **I hereby request** the correspondence (and scientific literature if it exists) relating to the change in the FYN Checklist from at *least 30% slow release Nitrogen* on turf (in the 2009 checklist) to at *least 15% slow release Nitrogen* on turf (in the 2010 checklist). I had informally requested this information from Esen Momol in July but have received no response.

Please advise me on how to proceed from here and if the records requests need to be formatted differently from the above.

Thank you,

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236
Cell: 941-914-0421

From: Cris Costello [mailto:cris.costello@sierraclub.org]

Sent: Thursday, July 29, 2010 1:23 PM

To: 'Nell, Terril A'; 'Payne, Jack M'

Cc: 'Jon Thaxton'; 'Theresa A. Connor'; 'Jack Merriam'; 'Brooks, Jerry'; 'Ritchie, Heather'; 'Thomas, Michael'

Subject: RE: Sarasota

Terril:

Your reply only serves to make our point louder and stronger than before:

1. You have intentionally ignored the water quality/water pollution prevention issue; your attempt to hide the fact that the "iron instead of nitrogen" recommendation for the summer is under the **Preventing Pollution** section of the FYN Handbooks is a failure. The recommendation is listed as one of the best ways to prevent water pollution by numerous IFAS and FDEP publications.

After 16 years of FDEP and IFAS recommending "iron instead of nitrogen", if you choose to remove that water pollution prevention recommendation from future publications you will need to provide us with the science that substantiates any such removal. **I hereby submit a public records request for that information if it exists**

2. You have threatened to weaken UF water pollution prevention recommendations rather than answer a perfectly legitimate request for information.

What you have accomplished is to taint the reputation of your department and UF and nothing else. Our request for the information still stands and if I have neglected to formalize that request in the past I do so now: **I hereby submit a public records request for the information sought in the below email dated Tuesday, July 27, 2010 4:57 PM.**

In addition, in reference to your statement below: "IFAS Extension requires review of all EDIS publications and this procedure has been followed on all of our extension publications."

I hereby submit a public records request for the names, titles and contact information and their respective reviews made prior to publication for SL 283 and ENH 1115.

From my reading of the public records law, none of these requested items are exempt from disclosure. If I have not used the proper language or method to submit a formal public records request please advise me of the correct manner to do so.

Let me remind you that I have attempted for over two years (since June 2008) to resolve this issue outside of public view; any further delay will prove that your desire is to make this conversation public.

Thank you for your prompt attention to these public records requests,

Cris Costello
Regional Representative
Sierra Club
1305 Fruitville Road

Sarasota, FL 34236
Office: 941-951-6084
Cell: 941-914-0421

From: Nell, Terril A [mailto:tanell@ufl.edu]
Sent: Thursday, July 29, 2010 11:40 AM
To: Cris Costello
Cc: 'Jon Thaxton'; 'Theresa A. Connor'; 'Jack Merriam'
Subject: RE: Sarasota

Cris,

Your email to Dr. Payne has been referred to me. You have clearly outlined the Florida-Friendly Landscaping™ principles that form the foundation for our fertilizer recommendations and landscape management programs. These principles are represented in all areas of our programs: Florida Yards and Neighborhoods program, Homeowner Association programs, Builder and Developer programs and the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industry manual and training program. As you are aware, every commercial fertilizer applicator in the state is required to conduct and pass the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industry by 2014.

One area that will be clarified is the statement about the use of iron to green up turfgrass during the summer. In the FYN Handbook, we state: *"Your plants will indicate when they lack certain elements – you just have to know what to look for. Plant nutrient deficiency symptoms are often symmetrical (for example, yellowing areas that appear to be mirror images on a plant leaf), whereas pathogenic (e.g., fungal or bacterial) problems tend to appear more randomly on the plant. Remember that many nutrient deficiencies look similar. Any time you're not certain of what ails a plant, take a sample into your county Extension office for help."* In other words, iron cannot substitute for nitrogen deficiency and nitrogen cannot substitute for iron deficiency. We will be making every effort to be clear about these nutrient relationships in the future and appreciate that you have called this misunderstanding to our attention.

As you and I have discussed in the past, much of the problem we face is related to poor application practices by consumers or improper management of clippings and yard waste. These problems require an on-going educational program as we are doing through the Florida Friendly Landscaping™ program within our county extension offices and in cooperation with the Florida Department of Environmental Protection.

Finally, IFAS Extension requires review of all EDIS publications and this procedure has been followed on all of our extension publications.

I hope this information is helpful.

Terril

Sikes, Janine

From: Sikes, Janine
Sent: Tuesday, August 24, 2010 11:38 AM
To: Nell, Terril A
Cc: Stern, Paul E
Subject: Sierra Club

Terrill:

Paul Stern and I met on Monday to discuss the public records requests Cris Costello has submitted. I told Paul I would work with you on two pieces of the request Cris Costello sent to me.

Below is the first:

- 1.) Terril Nell was quoted in the article *Retail Group Dumps Fertilizer Ban* <http://www.sunshinestatenews.com/story/retail-group-dumps-fertilizer-ban-0>. Nell stated: "We are not able to support fertilizer management recommendations unless we can document the science upon which they are based." "The state model ordinance is backed by sound science and we are recommending that cities and counties adopt this ordinance until additional science is available."

I hereby request the "science upon which" the urban "fertilizer management recommendations" in the "state model ordinance" are based; this includes:

- A. The scientific literature that suggests a 3-foot fertilizer-free zone is superior to a 10-foot fertilizer-free zone for keeping fertilizer from running into surface water bodies;
- B. The scientific literature that suggests no storm water runoff of applied fertilizer nutrients occurs unless a rainfall of 2 inches or more falls within a 24-hour period;
- C. The scientific literature that suggests 30% slow/controlled release fertilizer is more or equally protective of water quality than 50% or higher slow/controlled release fertilizer;
- D. The scientific literature that suggests the FDEP Model "Prohibited Application Period" can be followed to the extent that fertilizer will not be applied before or during a rainfall event that produces enough runoff to carry applied nutrients from a landscape.

Feel free to call me to discuss what we have already provided her and to discuss any pieces of this that remain. I should be around until 3:30 p.m. today and most of the day tomorrow.

I am clarifying another request with Cris and will touch base with you on that once she returns my e-mail. janine

Janine Sikes
Director of Public Affairs
University Relations
101 Tigert Hall
352-846-3903/06
jysikes@ufl.edu

Sikes, Janine

From: Stern,Paul E
Sent: Thursday, August 19, 2010 2:17 PM
To: Sikes, Janine
Subject: Re: Public Records Request

Talk to you Monday.

From: Sikes, Janine
To: Stern,Paul E
Cc: Holt,Rebecca J; Wingo,Barbara C; Nell,Terril A; Keith,Jamie Lewis; Payne,Jack M; Adams,Jane A
Sent: Thu Aug 19 14:11:52 2010
Subject: FW: Public Records Request

Hi all:

I spoke with Cris Costello on Wednesday afternoon and asked her to refine her No. 2 request on the public records request she sent me (pasted below.) She complied with my request. See below.

I also informed her that I would be working with the general counsel and IFAS to determine what has been delivered to her and what remains outstanding. I told her the UF attorney handling her request is out for the rest of the week. Paul and I will compare notes when he returns on Monday. We'll loop in everyone else after that.

Thanks, janine

Janine Sikes
Director of Public Affairs
University Relations
101 Tigert Hall
352-846-3903/06
jysikes@ufl.edu

From: Cris Costello [mailto:cris.costello@sierraclub.org]
Sent: Thursday, August 19, 2010 2:02 PM
To: Sikes, Janine
Subject: FW: Public Records Request

Ms. Sikes:

Per your request, I am refining the public records request number 2 from the below email.

Please change that request to the following:

All email or hard copy correspondence from June 2008 to the present between (to and from) George Hochmuth, Terril Nell, Erica Santella, Michael Thomas (FDEP), Chris Wible, Steven Kelly, Jim Spratt, Barry Troutman, Mary Hartney, Allen Fugler, James Skillen, Betsy McGill, Hugh Gramling, Ben Bolusky and Chuck Aller.

Thank you so much.

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236, Hugh Gramling
Office: 941-951-6084
Cell: 941-914-0421

From: Cris Costello [mailto:cris.costello@sierraclub.org]
Sent: Friday, August 13, 2010 12:53 PM
To: 'jys@ufl.edu'
Cc: 'Nell,Terril A'; 'eam@ufl.edu'; 'Payne,Jack M'
Subject: Public Records Request

Dear Ms. Sikes:

On July 29, 2010 I submitted public records requests to Terril Nell, with a copy to Jack Payne. Because I have heard nothing since that date, I am sending the request again, to you, in order to ensure that it has been correctly submitted and will be correctly processed.

In the below email chain you will find my previous public records requests, however, I here restate those requests:

1. Terril Nell was quoted in the article *Retail Group Dumps Fertilizer Ban* <http://www.sunshinestatenews.com/story/retail-group-dumps-fertilizer-ban-0>. Nell stated: "We are not able to support fertilizer management recommendations unless we can document the science upon which they are based." "The state model ordinance is backed by sound science and we are recommending that cities and counties adopt this ordinance until additional science is available."

I hereby request the "science upon which" the urban "fertilizer management recommendations" in the "state model ordinance" are based; this includes:

- A. The scientific literature that suggests a 3-foot fertilizer-free zone is superior to a 10-foot fertilizer-free zone for keeping fertilizer from running into surface water bodies;
 - B. The scientific literature that suggests no storm water runoff of applied fertilizer nutrients occurs unless a rainfall of 2 inches or more falls within a 24-hour period;
 - C. The scientific literature that suggests 30% slow/controlled release fertilizer is more or equally protective of water quality than 50% or higher slow/controlled release fertilizer;
 - D. The scientific literature that suggests the FDEP Model "Prohibited Application Period" can be followed to the extent that fertilizer will not be applied before or during a rainfall event that produces enough runoff to carry applied nutrients from a landscape.
2. At the municipal, county and state level Terril Nell and George Hochmuth have repeatedly promoted fertilizer management recommendations that are in direct conflict with the FYN Florida-friendly landscaping fertilization recommendations.

I hereby request the documentation, including email and hard copy correspondence, upon which the contradiction between Terril Nell's and George Hochmuth's policy recommendations regarding urban fertilizer management and the current FYN Florida-friendly landscaping fertilization recommendations is based. This will include correspondence between Nell and Hochmuth and representatives of the turfgrass, landscape maintenance, nursery growers, fertilizer and pest control industries, the retail federation, FDACS, FDEP and any and all state senators, representatives and legislative aides relating to the following publications and processes:

- a. The revision of the *2008 Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* (BMP Manual);
- b. The drafting of the 2008 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
- c. The drafting of SL283: *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*;
- d. The drafting of ENH 1115: *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*;
- e. The drafting of the *Florida's Urban Landscape Water Quality Research Consortium* mission statement, research priorities, and discussion paper;
- f. The drafting of 2009 Senate Bill 494 and 2010 Senate Bill 382/House Bill 1445; and

- g. The 2010 revision of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
3. **I hereby request** the names, titles and contact information for all the internal and external reviewers of the 2009 IFAS (EDIS) publications SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances* and ENH 1115 *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*, and their respective reviews done prior to the original publication of SL 283 and ENH 1115.
 4. **I hereby request** the names, titles and contact information for all the internal and external reviewers of SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*, and their respective reviews done after the original publication of SL 283.

In addition to my previous requests, **I hereby request** the correspondence (and scientific literature if it exists) relating to the change in the FYN Checklist from at *least 30% slow release Nitrogen* on turf (in the 2009 checklist) to at *least 15% slow release Nitrogen* on turf (in the 2010 checklist). I had informally requested this information from Esen Momol in July but have received no response.

Please advise me on how to proceed from here and if the records requests need to be formatted differently from the above.

Thank you,

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236
Cell: 941-914-0421

From: Cris Costello [mailto:cris.costello@sierraclub.org]
Sent: Thursday, July 29, 2010 1:23 PM
To: 'Nell,Terril A'; 'Payne,Jack M'
Cc: 'Jon Thaxton'; 'Theresa A. Connor'; 'Jack Merriam'; 'Brooks, Jerry'; 'Ritchie, Heather'; 'Thomas, Michael'
Subject: RE: Sarasota

Terril:

Your reply only serves to make our point louder and stronger than before:

1. You have intentionally ignored the water quality/water pollution prevention issue; your attempt to hide the fact that the "iron instead of nitrogen" recommendation for the summer is under the **Preventing Pollution** section of the FYN Handbooks is a failure. The recommendation is listed as one of the best ways to prevent water pollution by numerous IFAS and FDEP publications.

After 16 years of FDEP and IFAS recommending "iron instead of nitrogen", if you choose to remove that water pollution prevention recommendation from future publications you will need to provide us with the science that substantiates any such removal. **I hereby submit a public records request for that information if it exists.**

2. You have threatened to weaken UF water pollution prevention recommendations rather than answer a perfectly legitimate request for information.

What you have accomplished is to taint the reputation of your department and UF and nothing else. Our request for the information still stands and if I have neglected to formalize that request in the past I do so now: **I hereby submit a public records request for the information sought in the below email dated Tuesday, July 27, 2010 4:57 PM.**

In addition, in reference to your statement below: "IFAS Extension requires review of all EDIS publications and this procedure has been followed on all of our extension publications."

I hereby submit a public records request for the names, titles and contact information and their respective reviews made prior to publication for SL 283 and ENH 1115.

From my reading of the public records law, none of these requested items are exempt from disclosure. If I have not used the proper language or method to submit a formal public records request please advise me of the correct manner to do so.

Let me remind you that I have attempted for over two years (since June 2008) to resolve this issue outside of public view; any further delay will prove that your desire is to make this conversation public.

Thank you for your prompt attention to these public records requests,

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236
Office: 941-951-6084
Cell: 941-914-0421

From: Nell,Terril A [mailto:tanell@ufl.edu]
Sent: Thursday, July 29, 2010 11:40 AM
To: Cris Costello
Cc: 'Jon Thaxton'; 'Theresa A. Connor'; 'Jack Merriam'
Subject: RE: Sarasota

Cris,

Your email to Dr. Payne has been referred to me. You have clearly outlined the Florida-Friendly Landscaping™ principles that form the foundation for our fertilizer recommendations and landscape management programs. These principles are represented in all areas of our programs: Florida Yards and Neighborhoods program, Homeowner Association programs, Builder and Developer programs and the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industry manual and training program. As you are aware, every commercial fertilizer applicator in the state is required to conduct and pass the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industry by 2014.

One area that will be clarified is the statement about the use of iron to green up turfgrass during the summer. In the FYN Handbook, we state: *"Your plants will indicate when they lack certain elements – you just have to know what to look for. Plant nutrient deficiency symptoms are often symmetrical (for example, yellowing areas that appear to be mirror images on a plant leaf), whereas pathogenic (e.g., fungal or bacterial) problems tend to appear more randomly on the plant. Remember that many nutrient deficiencies look similar. Any time you're not certain of what ails a plant, take a sample into your county Extension office for help."* In other words, iron cannot substitute for nitrogen deficiency and nitrogen cannot substitute for iron deficiency. We will be making every effort to be clear about these nutrient relationships in the future and appreciate that you have called this misunderstanding to our attention.

As you and I have discussed in the past, much of the problem we face is related to poor application practices by consumers or improper management of clippings and yard waste. These problems require an on-going educational program as we are doing through the Florida Friendly Landscaping™ program within our county extension offices and in cooperation with the Florida Department of Environmental Protection.

Finally, IFAS Extension requires review of all EDIS publications and this procedure has been followed on all of our extension publications.

I hope this information is helpful.

Terril

Sikes, Janine

From: Sikes, Janine
Sent: Tuesday, August 17, 2010 5:17 PM
To: Stern, Paul E
Subject: RE: Sierra Club

Pasted below: I want to address No. 2 which asks for e-mails for an unspecified period of time between Terrill Nell and George Hochmuth and a series of unidentified companies in various industries, all state senators, representatives and legislative aides. It's a ridiculous request that we would never be able to comply with. janine

Dear Ms. Sikes:

On July 29, 2010 I submitted public records requests to Terril Nell, with a copy to Jack Payne. Because I have heard nothing since that date, I am sending the request again, to you, in order to ensure that it has been correctly submitted and will be correctly processed.

In the below email chain you will find my previous public records requests, however, I here restate those requests:

1. Terril Nell was quoted in the article *Retail Group Dumps Fertilizer Ban* <http://www.sunshinestatenews.com/story/retail-group-dumps-fertilizer-ban-0>. Nell stated: "We are not able to support fertilizer management recommendations unless we can document the science upon which they are based." "The state model ordinance is backed by sound science and we are recommending that cities and counties adopt this ordinance until additional science is available."

I hereby request the "science upon which" the urban "fertilizer management recommendations" in the "state model ordinance" are based; this includes:

- A. The scientific literature that suggests a 3-foot fertilizer-free zone is superior to a 10-foot fertilizer-free zone for keeping fertilizer from running into surface water bodies;
 - B. The scientific literature that suggests no storm water runoff of applied fertilizer nutrients occurs unless a rainfall of 2 inches or more falls within a 24-hour period;
 - C. The scientific literature that suggests 30% slow/controlled release fertilizer is more or equally protective of water quality than 50% or higher slow/controlled release fertilizer;
 - D. The scientific literature that suggests the FDEP Model "Prohibited Application Period" can be followed to the extent that fertilizer will not be applied before or during a rainfall event that produces enough runoff to carry applied nutrients from a landscape.
2. At the municipal, county and state level Terril Nell and George Hochmuth have repeatedly promoted fertilizer management recommendations that are in direct conflict with the FYN Florida-friendly landscaping fertilization recommendations.

I hereby request the documentation, including email and hard copy correspondence, upon which the contradiction between Terril Nell's and George Hochmuth's policy recommendations regarding urban fertilizer management and the current FYN Florida-friendly landscaping fertilization recommendations is based. This will include correspondence between Nell and Hochmuth and representatives of the turfgrass, landscape maintenance, nursery growers, fertilizer and pest control industries, the retail federation, FDACS, FDEP and any and all state senators, representatives and legislative aides relating to the following publications and processes:

- a. The revision of the 2008 *Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries* (BMP Manual);
- b. The drafting of the 2008 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
- c. The drafting of SL283: *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*;
- d. The drafting of ENH 1115: *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*;
- e. The drafting of the *Florida's Urban Landscape Water Quality Research Consortium* mission statement, research priorities, and discussion paper;
- f. The drafting of 2009 Senate Bill 494 and 2010 Senate Bill 382/House Bill 1445; and

- g. The 2010 revision of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
3. **I hereby request** the names, titles and contact information for all the internal and external reviewers of the 2009 IFAS (EDIS) publications SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances* and ENH 1115 *Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping Ordinances*, and their respective reviews done prior to the original publication of SL 283 and ENH 1115.
 4. **I hereby request** the names, titles and contact information for all the internal and external reviewers of SL 283 *Unintended Consequences Associated with Certain Urban Fertilizer Ordinances*, and their respective reviews done after the original publication of SL 283.

In addition to my previous requests, **I hereby request** the correspondence (and scientific literature if it exists) relating to the change in the FYN Checklist from at least 30% slow release Nitrogen on turf (in the 2009 checklist) to at least 15% slow release Nitrogen on turf (in the 2010 checklist). I had informally requested this information from Esen Momol in July but have received no response.

Please advise me on how to proceed from here and if the records requests need to be formatted differently from the above.

Thank you,

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236
Cell: 941-914-0421

From: Stern,Paul E
Sent: Tuesday, August 17, 2010 5:02 PM
To: Sikes, Janine
Subject: Re: Sierra Club

probably, but what was her request to you?

From: Sikes, Janine
To: Stern,Paul E
Sent: Tue Aug 17 16:53:25 2010
Subject: RE: Sierra Club

OK. I may e-mail Cris Costello tomorrow regarding her e-mail requests she made to me. They are overly broad and would cost thousands if we could even complete them. I think I can do that without us comparing notes. Are you OK with that?
janine

From: Stern,Paul E
Sent: Tuesday, August 17, 2010 4:42 PM
To: Sikes, Janine
Subject: Re: Sierra Club

Sorry. I'm in a meeting in Alachua.

From: Sikes, Janine
To: Stern,Paul E
Sent: Tue Aug 17 16:40:00 2010
Subject: RE: Sierra Club

Are you in now?

From: Stern,Paul E
Sent: Tuesday, August 17, 2010 4:40 PM
To: Sikes, Janine
Subject: Re: Sierra Club

Janine, I will not be in tomorrow and was hoping to take off the rest of the week. If we should discuss it soon, I could come in on Thursday. Paul

From: Sikes, Janine
To: Stern,Paul E
Sent: Tue Aug 17 16:32:31 2010
Subject: Sierra Club

Paul:

Do you have time Wednesday to discuss the Sierra Club? I am free all day except between 11 a.m. and 1 p.m. janine

Janine Sikes
Director of Public Affairs
University Relations
101 Tigert Hall
352-846-3903/06
jysikes@ufl.edu

Stern,Paul E

From: Nell, Terril A
Sent: Monday, September 20, 2010 2:01 PM
To: Stern, Paul E
Cc: Momol, Esen
Subject: RE: estimates

Paul,

Esen and I have discussed the 15% slow release recommendation. As I thought, the change was made to comply with state law as stated in the rule 5e-1.003(4)(e) (Slow or Controlled Release, stabilized Nitrogen and Enhanced Efficiency Fertilizers). This rule states that fertilizers containing 15% slow release or more are classified as 'slow release'. With this change we comply with state law but do not restrict the use or suggest that fertilizers with only 15% slow release be used. Instead, we are suggesting that slow release fertilizers (15% or more of the nitrogen from slow release nitrogen sources) are used.

On page 25 of the FYN Handbook, we state that "In Florida, any fertilizer that is labeled "slow release" or "controlled release" must contain 15 percent or more slow release or control release nitrogen.

It continuesit's a good idea to look for a fertilizer with higher amounts of nitrogen. So, we recommend slow release nitrogen higher than 15%.

I hope this is helpful.

Terril



Office of the Vice President and General Counsel

123 Tigert Hall
PO Box 113125
Gainesville, FL 32611-3125
352-392-1358
352-392-4387 Fax

September 9, 2010

Cris Costello
Regional Representative
Sierra Club
1365 Fruitville Road
Sarasota, FL 34236

RE: Public Records Request

Dear Ms Costello:

I am following up on your public records requests and our telephone conversation last week. You asked for whatever responsive information we could provide as soon as possible, especially regarding the documents and information that I explained are not actually public records subject to disclosure under the Florida Public Records Act.

In response to your requests, numbered 3 and 4 in your August 13, 2010, email to Janine Sikes, any documents that might have the names, titles, contact information, and reviews of the reviewers of the two EDIS publications, "Unintended Consequences Associated with Certain Urban Fertilizer Ordinances" and "Frequently Asked Questions about Landscape Fertilization for Florida-Friendly Landscaping," are not public records. Therefore, the University is not providing documents to you in response that these requests.

As clarified by the Florida Supreme Court (*Shevin v. Byron, Harless, et al.*, 379 So.2d 633 (1980)), public records are those materials that are prepared in connection with official agency business and intended to perpetuate, communicate, or formalize knowledge. Materials that are prepared in review of EDIS publications, drafts, and revisions are merely precursors of governmental records. They are not intended to be final evidence of agency action. In this case, the reviews are an integral part of the process of research, study, and evaluation that goes into preparing the EDIS documents for publication.

In order to maintain the integrity and objectivity of the academic research and publication process, University researchers have a strong interest in withholding disclosure of this type of record. See *Molina v. The Board of Regents of the State of Florida*, Case No. 85-3212-CA (8th Cir. Fla.) 1985. The reviews are comparable to the research materials that were held by the circuit court in the *Molina* case to be preliminary to the actual research and scientific study. The anonymity of the reviewers and their reviews of the EDIS publications is vital to maintain the academic setting and atmosphere that ensures integrity and objectivity in formulating scientific advice. To subject these individual reviews to public scrutiny would extend the reach of the Public Records law beyond its useful purpose without supporting its legitimate public purpose.

Cris Costello
Page 2 of 2
September 9, 2010

The University of Florida respects greatly the prized and essential right of the public to have access to documents that support the business of its governmental agencies. However, there is also a valuable public need related to the freedom of academic researchers to formulate hypotheses and weigh scientific options in putting together recommendations that are included in their publications. The public would not be served by interrupting the scientific process by subjecting reviews, rough drafts, and other preliminary information to public scrutiny. These are the building blocks of the final product of University investigators' research and writing process, which includes the evaluation of existing scientific studies and information as well as independent reviews by other individuals. Of course, in evaluating the utility or accuracy of the information in scientifically based publications, anyone is free to review the literature, consult with experts, and weigh the evidence in support of or against the conclusions in the publication.

You also requested "the science upon which the urban fertilizer management recommendations in the state model ordinance are based." There is no particular document upon which that science is based. The Public Records Act does not require the University to conduct studies or to create documents in response to your request. In fact, Dr. Nell has already provided extensive scientific information and references to you in response to your past requests for information.

Your remaining requests relate to correspondence between Drs. Nell and Hochmuth and many other individuals and organizations. We are in the process of collecting that correspondence and will contact you after we have completed the location and review of the documents. This correspondence is likely substantial, and we will provide an estimate of the cost of reproducing it for you.

I understand that your requests have been included in more than one communication. If there are documents that you have requested in addition to those that I have identified in this letter, please do not hesitate to contact me with the additional documents that you request.

Sincerely,



Paul Elihu Stern
Senior University Counsel

PES/clt